

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY  
LITIGATION

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) MDL No. 2:18-mn-2873-RMG  
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) **This Order Relates to All Cases.**  
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**JOINT SUBMISSION REGARDING PROPOSED INITIAL PERSONAL  
INJURY BELLWETHER DISCOVERY POOL PLAINTIFFS**

Pursuant to this Court’s Case Management Order (“CMO”) No. 26, as amended by CMO 26.A. and 26.B., Co-lead Counsel for Plaintiffs on behalf of the PEC, as well as Co-lead Counsel for Defendants on behalf of the DCC, provide this submission identifying their joint proposal for the Initial Personal Injury Bellwether Discovery Pool Plaintiffs to undergo Core Discovery in the Personal Injury Tier One process.<sup>1</sup>

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<sup>1</sup> In connection with the bankruptcy of Kidde-Fenwal, Inc., the United States Bankruptcy Court for the District of Delaware has entered an order preliminarily extending the automatic stay and enjoining, until January 5, 2024 subject to further extension by the order of the Bankruptcy Court, AFFF claims against certain entities affiliated with Kidde-Fenwal, Inc. (“KFI Affiliates”) (the KFI Affiliates are Kidde plc, Kidde Fire Fighting, Inc., Chubb Fire Limited, Carrier Global Corporation, Carrier Fire & Security Americas Corp., Inc. (f/k/a UTC Fire & Security Americas Corporation), and Raytheon Technologies Corporation (f/k/a United Technologies Corporation)), as well as National Foam, Inc., and certain of its affiliates (“New National Foam Affiliates”) (the New National Foam Affiliates are Angus International Safety Group, Ltd., and Angus Fire Armor Corp.). *See In re: Kidde-Fenwal, Inc.*, Case No. 23-50387 (Bankr. Del. July 27, 2023) (Doc. 69). The Bankruptcy Court’s order provides that the PEC shall file a motion with the MDL Court seeking to sever Kidde-Fenwal, Inc., the KFI Affiliates, National Foam, Inc., and the New National Foam Affiliates from the first personal injury bellwether case selected for trial in the AFFF MDL. *Id.* at 7. However, in light of the delays in commencing the bellwether discovery process and the imminent January 5th expiration of the Stay, PEC reserves the right to move the Bankruptcy Court for relief from its obligation to sever, and move the MDL Court to re-join these defendants to the first personal injury bellwether trial should that become appropriate following an order of the Bankruptcy Court. In light of the automatic stay and injunction and anticipated severance of these

**A. Proposed Initial Personal Injury Bellwether Discovery Pool Plaintiffs**

The parties propose that the following twenty-five (25) plaintiffs comprise the Initial Personal Injury Bellwether Discovery Pool Plaintiffs, which includes five plaintiffs alleging kidney cancer<sup>2</sup>, eight plaintiffs alleging testicular cancer, eight plaintiffs alleging hypothyroidism/thyroid disease, and four plaintiffs alleging ulcerative colitis:

<b>Plaintiff Name</b>	<b>Case Number</b>	<b>Alleged CMO 26 Injury</b>	<b>Alleged CMO 26 Exposure Site</b>
Donnelly, Brock	2:20-cv-00209	Kidney Cancer	Pennsylvania
Hines, Consecpcion	2:18-cv-03381	Kidney Cancer	Colorado
Mola, John	2:20-cv-00428	Kidney Cancer	Pennsylvania
Speers, Clinton	2:21-cv-03181	Kidney Cancer	Pennsylvania
Voelker, Kevin	2:18-cv-03438	Kidney Cancer	Pennsylvania
Belarde, James	2:18-cv-03390	Testicular Cancer	Colorado
Bien, Michael	2:20-cv-00257	Testicular Cancer	Pennsylvania
Field, Alex	2:20-cv-00301	Testicular Cancer	Pennsylvania
Hartman, Rodney	2:20-cv-00302	Testicular Cancer	Pennsylvania
Sarvey, Jason	2:20-cv-00278	Testicular Cancer	Pennsylvania
Scheiler, Denny	2:18-cv-03390	Testicular Cancer	Colorado

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parties, Kidde-Fenwal, Inc., the KFI Affiliates, National Foam, Inc., and the New National Foam Affiliates have not participated in the bellwether selection process or discovery concerning the bellwether candidates, and on that basis, Kidde-Fenwal, Inc. and the KFI Affiliates reserve the right to oppose any attempt to have them join in such bellwether trials. Assuming the Court grants the motion to sever these defendants, it will not be necessary for them to execute *Lexecon* waivers for the cases discussed herein.

<sup>2</sup> As a compromise, the Parties have agreed to move forward selecting only five, rather than eight plaintiffs alleging kidney cancer, and request that the Court accept this proposal.

<b>Plaintiff Name</b>	<b>Case Number</b>	<b>Alleged CMO 26 Injury</b>	<b>Alleged CMO 26 Exposure Site</b>
Thein, Alan	2:18-cv-03381	Testicular Cancer	Colorado
Woods, Daryl	2:18-cv-03417	Testicular Cancer	Colorado
Bohlmann, Rita	2:18-cv-03395	Thyroid Disease	Colorado
Carlson, Dolores	2:18-cv-03401	Thyroid Disease	Colorado
DeMaio, Carole	2:18-cv-00291	Thyroid Disease	Pennsylvania
Fenlon, Ingrid	2:18-cv-03372	Thyroid Disease	Colorado
Frazier, Karin	2:18-cv-03372	Thyroid Disease	Colorado
Jordan, Denise	2:18-cv-03391	Thyroid Disease	Colorado
Montgomery, Ethel	2:18-cv-03370	Thyroid Disease	Colorado
Slagle, John	2:18-cv-03391	Thyroid Disease	Colorado
Feite, Michael	2:20-cv-00521	Ulcerative Colitis	Pennsylvania
Smalley, Anthony	2:18-cv-03371	Ulcerative Colitis	Colorado
Townsend, Scott	2:18-cv-03404	Ulcerative Colitis	Colorado
Zajicek, James	2:18-cv-03385	Ulcerative Colitis	Colorado

Attached as Appendix A is a chart providing additional details with respect to each of these plaintiffs, as required by CMO 26.

#### **B. Counsel Information**

Appendix A provides a list of Defendants in each case listed above. Pursuant to CMO 26, below is counsel information for each named Defendant:

<b>Defendant</b>	<b>Counsel</b>
3M Company	Michael A. Olsen Daniel L. Ring <b>MAYER BROWN LLP</b>

Defendant	Counsel
	<p>71 South Wacker Drive Suite 3200 Chicago, IL 60606 (312) 782-0600 <a href="mailto:molsen@mayerbrown.com">molsen@mayerbrown.com</a> <a href="mailto:dring@mayerbrown.com">dring@mayerbrown.com</a></p> <p>Brian C. Duffy <b>DUFFY &amp; YOUNG, LLC</b> 96 Broad Street Charleston, SC 29401 (843) 720-2044 <a href="mailto:bduffy@duffyandyoung.com">bduffy@duffyandyoung.com</a></p> <p>Brian L. Stekloff Tamarra Matthews Johnson <b>WILKINSON STEKLOFF LLP</b> 2001 M Street, NW - 10th Floor Washington, DC 20036 (202) 847-4000 <a href="mailto:bstekloff@wilkinsonstekloff.com">bstekloff@wilkinsonstekloff.com</a> <a href="mailto:tmatthewsjohnson@wilkinsonstekloff.com">tmatthewsjohnson@wilkinsonstekloff.com</a></p>
AGC Chemicals Americas Inc.	<p>Peter C. Condrón Clifford J. Zatz Andrew D. Kaplan <b>CROWELL &amp; MORING LLP</b> 1001 Pennsylvania Avenue, NW Washington, DC 20004 202.624.2500 <a href="mailto:pcondron@crowell.com">pcondron@crowell.com</a> <a href="mailto:czatz@crowell.com">czatz@crowell.com</a> <a href="mailto:akaplan@crowell.com">akaplan@crowell.com</a></p>
Amerex Corporation	<p>J. Alan Truitt Jennifer A. Simon Leland Frost <b>KAZMAREK MOWREY CLOUD LASETER LLP</b> 1914 4th Avenue North Suite 400 Birmingham, AL 35203 Phone: (205) 777-7972 Email: <a href="mailto:atruitt@kmcllaw.com">atruitt@kmcllaw.com</a></p>

Defendant	Counsel
	<p>Email: <a href="mailto:jimmon@kmcllaw.com">jimmon@kmcllaw.com</a></p> <p>Paul A. Dominick  R. Bruce Wallace  Alexandra Austin  <b>MAYNARD NEXSEN, PC</b>  205 King Street  Suite 400  Charleston, SC 29401  Phone: (843) 720-1734  Email: <a href="mailto:pdominick@maynardnexsen.com">pdominick@maynardnexsen.com</a>  Email: <a href="mailto:bwallace@maynardnexsen.com">bwallace@maynardnexsen.com</a>  Email: <a href="mailto:aaustin@maynardnexsen.com">aaustin@maynardnexsen.com</a></p>
Arkema, Inc.	<p>Heidi Levine  Alan E. Rothman  <b>SIDLEY AUSTIN LLP</b>  787 7th Avenue  New York, NY 10019  Phone: (212) 839-5300  <a href="mailto:hlevine@sidley.com">hlevine@sidley.com</a>  <a href="mailto:arothman@sidley.com">arothman@sidley.com</a></p> <p>J. Simone Jones  Daniel A. Spira  <b>SIDLEY AUSTIN LLP</b>  One South Dearborn Street  Chicago, IL 60613  Phone: (312) 853-7274  <a href="mailto:jimone.jones@sidley.com">jimone.jones@sidley.com</a>  <a href="mailto:dspira@sidley.com">dspira@sidley.com</a></p> <p>Lisa M. Gilford  <b>SIDLEY AUSTIN LLP</b>  555 West Fifth Street  Los Angeles, CA 90013  Phone: (213) 896-6000  <a href="mailto:lgilford@sidley.com">lgilford@sidley.com</a></p>
BASF Corporation	<p>Matthew A. Holian  John R. Wellschlager  <b>DLA PIPER</b>  33 Arch Street, 26th Floor  Boston, Massachusetts 02110-1447</p>

Defendant	Counsel
	(617) 406-6009 Telephone (617) 406-6109 Fax <a href="mailto:matt.holian@dlapiper.com">matt.holian@dlapiper.com</a> <a href="mailto:john.wellschlager@dlapiper.com">john.wellschlager@dlapiper.com</a>
Buckeye Fire Equipment Company	Michael L. Carpenter <b>GRAY, LAYTON, KERSH, SOLOMON, FURR &amp; SMITH, P.A.</b> 516 South New Hope Road Post Office Box 2636 Gastonia, NC 28053 (704) 865-4400 (704) 866-8010 fax <a href="mailto:mcarpenter@gastonlegal.com">mcarpenter@gastonlegal.com</a>
ChemDesign Products Incorporated	J. Hayes Ryan Jonathan Blakley <b>GORDON REES SCULLY MANSUKHANI, LLP</b> One North Franklin, Ste. 800 Chicago, IL 60606 P: (312) 565-1400 F: (312) 565-6511 <a href="mailto:hayesryan@grsm.com">hayesryan@grsm.com</a> <a href="mailto:jblakley@grsm.com">jblakley@grsm.com</a>
Chemguard, Inc. Tyco Fire Products L.P.	Joseph G. Petrosinelli Liam Montgomery J. Liat Rome <b>WILLIAMS &amp; CONNOLLY LLP</b> 680 Maine Ave., S.W. Washington, DC 20024 P: (202) 434-5000 F: (202) 434-5029 <a href="mailto:jpetrosinelli@wc.com">jpetrosinelli@wc.com</a> <a href="mailto:lmontgomery@wc.com">lmontgomery@wc.com</a> <a href="mailto:lrome@wc.com">lrome@wc.com</a>  David E. Dukes Amanda S. Kitts Wesley T. Moran <b>NELSON MULLINS RILEY &amp; SCARBOROUGH LLP</b> 1320 Main St. 17 <sup>th</sup> Fl

Defendant	Counsel
	Columbia, SC 29201 (803) 799-2000 <a href="mailto:david.dukes@nelsonmullins.com">david.dukes@nelsonmullins.com</a> <a href="mailto:amanda.kitts@nelsonmullins.com">amanda.kitts@nelsonmullins.com</a> <a href="mailto:wes.moran@nelsonmullins.com">wes.moran@nelsonmullins.com</a>
Chemicals Incorporated	Oliver E. Twaddell John F. Parker <b>GOLDBERG SEGALLA LLP</b> 711 Third Avenue, Suite 1900 New York, NY 10017 T: (646) 292-8751 <a href="mailto:otwaddell@goldbergsegalla.com">otwaddell@goldbergsegalla.com</a> <a href="mailto:jparker@goldbergsegalla.com">jparker@goldbergsegalla.com</a>
The Chemours Company The Chemours Company FC, LLC	Brent Dwerlkotte Amy M. Crouch Jennifer Hackman <b>SHOOK, HARDY &amp; BACON LLP</b> 2555 Grand Boulevard Kansas City, MO 64108 Telephone: (816) 474-6550 Facsimile: (816) 421-5547 <a href="mailto:amcrouch@shb.com">amcrouch@shb.com</a> <a href="mailto:dbdwerlkotte@shb.com">dbdwerlkotte@shb.com</a> <a href="mailto:jhackman@shb.com">jhackman@shb.com</a>  Molly H. Craig James B. Hood <b>HOOD LAW FIRM</b> 172 Meeting St. Charleston, SC 29401 <a href="mailto:Molly.craig@hoodlaw.com">Molly.craig@hoodlaw.com</a> <a href="mailto:James.hood@hoodlaw.com">James.hood@hoodlaw.com</a>  Martha Donovan Margaret Raymond-Flood Kimbrilee Weber <b>NORRIS MCLAUGHLIN, P.A.</b> 400 Crossing Boulevard 8th Floor Bridgewater, New Jersey 08807 (908) 722-0700

Defendant	Counsel
	<p><a href="mailto:mndonovan@norris-law.com">mndonovan@norris-law.com</a>  <a href="mailto:mraymondflood@norris-law.com">mraymondflood@norris-law.com</a>  <a href="mailto:kmweber@norris-law.com">kmweber@norris-law.com</a></p> <p>Stephen Cox  <b>ROBINSON BRADSHAW</b>  202 East Main Street  Suite 201  Rock Hill, SC 29730  (803) 325-2900  <a href="mailto:scox@robinsonbradshaw.com">scox@robinsonbradshaw.com</a></p>
Clariant Corporation	<p>Melanie Black Dubis, Esq.  Drew Hargrove, Esq.  <b>PARKER POE ADAMS &amp; BERNSTEIN LLP</b>  301 Fayetteville Street, Suite 1400  Raleigh, North Carolina 27601  Telephone: (919) 828-0564  <a href="mailto:melaniedubis@parkerpoe.com">melaniedubis@parkerpoe.com</a>  <a href="mailto:drewhargrove@parkerrpoe.com">drewhargrove@parkerrpoe.com</a></p> <p>Steven D. Weber, Esq.  <b>PARKER POE ADAMS &amp; BERNSTEIN LLP</b>  620 S. Tryon Street, Suite 800  Charlotte, NC 28202  Telephone: (704) 335-9065  <a href="mailto:steveweber@parkerpoe.com">steveweber@parkerpoe.com</a></p> <p>Kevin A. Dunlap, Esq.  <b>PARKER POE ADAMS &amp; BERNSTEIN LLP</b>  110 East Court Street, Suite 200  Greenville, SC 29601  Telephone: (864) 577-6370  <a href="mailto:kevindunlap@parkerpoe.com">kevindunlap@parkerpoe.com</a></p>
E.I. Du Pont De Nemours and Company Corteva Inc. DuPont de Nemours, Inc.	<p>Brent Dwerlkotte  Amy M. Crouch  Jennifer Hackman  <b>SHOOK, HARDY &amp; BACON LLP</b>  2555 Grand Boulevard  Kansas City, MO 64108</p>



Defendant	Counsel
	<p>Telephone: (816) 474-6550  Facsimile: (816) 421-5547  <a href="mailto:amcrouch@shb.com">amcrouch@shb.com</a>  <a href="mailto:dbdwerlkotte@shb.com">dbdwerlkotte@shb.com</a>  <a href="mailto:jhackman@shb.com">jhackman@shb.com</a></p> <p>Molly H. Craig  James B. Hood  <b>HOOD LAW FIRM</b>  172 Meeting St.  Charleston, SC 29401  <a href="mailto:Molly.craig@hoodlaw.com">Molly.craig@hoodlaw.com</a>  <a href="mailto:James.hood@hoodlaw.com">James.hood@hoodlaw.com</a></p> <p>John C. Moylan, III  Alice W. Parham Casey  Matthew T. Richardson  Mary Lucille Dinkins  <b>WYCHE, P.A.</b>  807 Gervais St., Suite 301  Columbia, SC 29201  (803) 254-6542  (803) 254-6544 (Fax)  <a href="mailto:jmoylan@wyche.com">jmoylan@wyche.com</a>  <a href="mailto:tcasey@wyche.com">tcasey@wyche.com</a>  <a href="mailto:mrichardson@wyche.com">mrichardson@wyche.com</a>  <a href="mailto:ldinkins@wyche.com">ldinkins@wyche.com</a></p> <p>Katherine L.I. Hacker  <b>BARTLIT BECK LLP</b>  1801 Wewatta St. 12th Floor  Denver, Colorado 80202  (303) 592-3100  (303) 592-3140 (Fax)  <a href="mailto:Kat.hacker@bartlitbeck.com">Kat.hacker@bartlitbeck.com</a></p>
Deepwater Chemicals Inc.	<p>Kurt D. Weaver  Katherine Zimmerman  <b>WOMBLE BOND DICKINSON (US) LLP</b>  555 Fayetteville Street  Suite 1100  Raleigh, NC 27601  T: (919) 755-8163  M: (919) 819-4037</p>

Defendant	Counsel
	<a href="mailto:Kurt.weaver@wbd-us.com">Kurt.weaver@wbd-us.com</a> <a href="mailto:Katherine.Zimmerman@wbd-us.com">Katherine.Zimmerman@wbd-us.com</a>
Dynax Corporation	Addie K.S. Ries Cliff Brinson <b>SMITH, ANDERSON, BLOUNT,  DORSETT, MITCHELL &amp; JERNIGAN,  LLP</b> 150 Fayetteville Street, Ste. 2300 Raleigh, NC 27601 (919) 821-1220 <a href="mailto:aries@smithlaw.com">aries@smithlaw.com</a> <a href="mailto:cbrinson@smithlaw.com">cbrinson@smithlaw.com</a>
Nation Ford Chemical Company	Ethan R. Ware, Esq. Richard H. Willis, Esq. Ruth A. Levy, Esq. <b>WILLIAMS MULLEN</b> 1230 Main Street, Suite 330 Columbia, SC 29201 (T): 803.567.4600 (F): 803.567.4601 <a href="mailto:eware@williamsmullen.com">eware@williamsmullen.com</a> <a href="mailto:rwillis@williamsmullen.com">rwillis@williamsmullen.com</a> <a href="mailto:rlevy@williamsmullen.com">rlevy@williamsmullen.com</a>
National Foam	Keith E. Smith Kaitlyn R. Maxwell <b>GREENBERG TRAUIG</b> 1717 Arch Street Suite 400 Philadelphia, PA 19103 (215) 988-7800 T (215) 988-7843 D <a href="mailto:smithkei@gtlaw.com">smithkei@gtlaw.com</a> <a href="mailto:maxwellk@gtlaw.com">maxwellk@gtlaw.com</a>

## **C. Certification Regarding Waiver of *Lexecon* Rights**

### **1. Defendants' Certification**

Each Defendant properly served in the above-referenced cases (as listed in Appendix A) agrees to waive its rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Lerach*, 523 U.S. 26 (1998). This waiver is specific only as to the individual plaintiff selected as a Personal Injury Tier One Plaintiff<sup>3</sup> and does not apply to any other plaintiff or case in this MDL or in the event that the Personal Injury Tier One Plaintiff's case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants, or any individual Defendant, may have as to any claim or the conduct of any trial, including, but not limited to, the application of nonmutual offensive collateral estoppel to any subsequent case involving a different plaintiff.

### **2. Plaintiffs' Certification**

Each plaintiff named in section A above agrees to waive its rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Lerach*, 523 U.S. 26 (1998). This waiver is without prejudice to any other rights, privileges and/or objections that any individual Plaintiff may have.

\* \* \*

Co-lead Counsel for Plaintiffs and Defendants stand ready to provide the Court with any additional information that it may require regarding their proposed Initial Personal Injury Bellwether Discovery Pool Plaintiffs (a/k/a Personal Injury Tier One Plaintiffs). Pursuant to the Parties' proposed Case Management Order, the parties propose and respectfully request to begin

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<sup>3</sup> The Defendants' waiver also includes any loss of consortium claims asserted in the individual plaintiff's case.

Tier One discovery relating to the above-referenced Plaintiffs three (3) business days after the Court enters an order confirming selections.

Dated: December 11, 2023

Respectfully submitted,

/s/Michael A. London

Michael A. London  
Douglas and London PC  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
P: (212)-566-7500  
F: (212)-566-7501  
[mlondon@douglasandlondon.com](mailto:mlondon@douglasandlondon.com)

Paul J. Napoli  
Napoli Shkolnik  
1302 Avenida Ponce de Leon  
Santurce, Puerto Rico 00907  
P: (212)-397-1000  
F: (646)-843-7603  
[pnapoli@nsprlaw.com](mailto:pnapoli@nsprlaw.com)

Scott Summy  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue  
Suite 1100  
Dallas, TX 75219  
P: (214)-521-3605  
[ssummy@baronbudd.com](mailto:ssummy@baronbudd.com)

Joseph F. Rice  
Motley Rice LLC  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29464  
P: (843) 216-9000  
[jrice@motleyrice.com](mailto:jrice@motleyrice.com)

*Co-lead Counsel for Plaintiffs*

Fred Thompson, III  
Motley Rice LLC  
28 Bridgeside Boulevard  
Mt Pleasant, SC 29464

/s/Joseph G. Petrosinelli

Joseph G. Petrosinelli  
Williams & Connolly LLP  
680 Maine Ave., S.W.  
Washington, DC 20024  
P: (202) 434-5000  
F: (202) 434-5029  
[jpetrosinelli@wc.com](mailto:jpetrosinelli@wc.com)

Michael A. Olsen  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606  
P: (312) 701-7120  
F: (312) 706-8742  
[molsen@mayerbrown.com](mailto:molsen@mayerbrown.com)

*Co-lead Counsel for Defendants*

/s/David E. Dukes

David E. Dukes  
Nelson Mullins Riley & Scarborough  
LLP  
1320 Main Street, 17th Floor  
Columbia, SC 29201  
P: (803) 255-9451  
F: (803) 256-7500  
[david.dukes@nelsonmullins.com](mailto:david.dukes@nelsonmullins.com)

Brian Duffy  
Duffy & Young LLC  
96 Broad Street  
Charleston, SC 29401  
P: (843) 720-2044  
F: (843) 720-2047  
[bduffy@duffyandyoung.com](mailto:bduffy@duffyandyoung.com)

P: (843)-216-9000  
F: (843)-216-9440  
[fthompson@motleyrice.com](mailto:fthompson@motleyrice.com)  
*Liaison Counsel for Plaintiffs*

*Co-liaison Counsel for Defendants*